

Global Right to Information Update

An Analysis by Region
July 2013

FOIANet

Freedom of Information Advocates Network
www.foiadvocates.net



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About the Freedom of Information Advocates Network

The Freedom of Information Advocates Network (FOIANet) is an international information-sharing network of organisations and individuals working to promote the right to access information held by public authorities or simply the right to information (RTI). It was founded at a meeting in Sofia, Bulgaria, in 2002, which brought together civil society groups from around Europe, as well as representatives from India, Mexico, South Africa and the United States. Together, the groups agreed on the importance of forming a global network to promote RTI.

The members of FOIANet are civil society organisations with active programmes to promote the right to information. FOIANet runs a discussion list for news and debate on the right to information. This is available to members, but also to individuals who register, and there are currently over 600 such people on this list. These include civil society organisation (CSO) representatives and lawyers, academics, information commissioners and others with a specialised interest in the right to information. The network launched and promotes International Right to Know Day, which takes place on 28 September every year.

Note: The historical term describing laws which give individuals a right to access information held by public authorities is 'freedom of information' (or FOI), and it is from this term that the name of FOIANet is derived. As the idea of a human right to information has evolved, the term 'right to information' (or RTI) has become a preferred term among those who advocate for this key democratic right. Another commonly used term is 'access to information'.

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The report was edited by Lydia Medland of the Secretariat of the FOIANet, based at Access Info Europe, and by Toby Mendel, Chair of the FOIANet Steering Committee, and Executive Director of the Centre for Law and Democracy, who also worked together to prepare the Introduction.

In addition to the writers, thanks are due to a number of others who provided us with extra analysis of countries and regions, who applied to be writer organisations or who contributed to the debates that have informed our knowledge of the regions presented in this report. These include not just civil society advocates but also a rich community of journalists, information commissioners and people working in international institutions who consistently help to keep FOIANet a fluid and active forum for exchanges about RTI.

Some of those who have contributed information compiled in this report: Daniel Metcalfe, Faculty Fellow in Law and Government of the American University's Washington College of Law, United States; Helen Dettlshime, Executive Director, Access Info Europe; Lila Said Rodriguez, Mexico Informa, Mexico; Mar Cabeza Valero, journalist, Spain; Priscilla Castillo Blanco, Camas Abertas, Brazil; and Salla Segrt, Transparency International Croatia.

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The photos displayed on the front cover of this report and on pages 2 and 4 were the winners of the 'I have a Right to Know' photo competition held to celebrate Right to Know Day 2012:

- 1st Place: 'The other access' by Ranakoson Toljanahary, Antananarivo, Madagascar (page 2).
- 2nd Place: 'I have a right to know' by Ramesh Soni, Dhar, India (page 4, top).
- 3rd Place: 'The Godfather' by Rajarshi Choudhury, Bangalore, India (page 4, bottom).

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Each regional section of this report includes a map of that region, designed to help situate the reader. The countries in the maps are colour coded according to whether they have an RTI law or not, and according to the strength of the laws where they exist. The data on the strength of the RTI Laws has been sourced from the RTI Rating (www.rti-rating.org), a project by Access Info Europe and the Centre for Law and Democracy under which experts and lawyers analysed all national RTI Laws and comparatively rated them. The rating and maps in this report are therefore based on the strength of the legal protection for RTI in each country and should not be understood as an overall reflection of respect for RTI in practice. The RTI Rating is updated on a yearly basis and the country information included in the maps in this report is correct as of September 2012.

The design and layout for the report was done by Rubén Miján.

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Introduction

Ten Years of FOIANet

The Freedom of Information Advocates Network has now been active for 10 years. Its members believe that transparent and accountable government is possible only where the right to information has been enshrined in law and implemented in practice. In 2002, when the network was first founded, just 40 countries had passed RTI laws. Today, that figure has more than doubled with 95 countries recognising the right to information.

As a result, billions of people around the world now enjoy the right to access information held by their governments and national public bodies. Millions of people around the world have used these laws and policies to access public information, to expose and prevent corruption, to enhance their ability to participate in public affairs, to protect other human rights, to hold governments to account, to improve on service delivery, to facilitate their businesses and to further their own personal goals. A growing number of international institutions have also recognised the right to information through policies giving individuals a right to request and receive information from them.

The right to information is also one of the founding ideas behind a broader movement for open and accountable government which is gaining ever more impetus and recognition. A notable development in this area has been the launching of the Open Government Partnership in 2011 which has the potential to provide a new opportunity for civil society to push for greater recognition and respect for the right to information.

FOIANet and its members do not claim credit for all, or even for most, of these developments. However, in many cases national RTI laws have come into place, or been improved, due to the campaigning, research and perseverance of civil society groups and advocates from across the world. Without the efforts of these advocates, it would also not have been possible to achieve international recognition of the right to information as a human right.

A list of FOIANet's achievements over the first ten years of its existence, as well as remaining challenges and its goals for the next ten years are found in Annex I, which contains FOIANet's 10-10-10 Statement: Achievements, Challenges and Goals. This Global Right to Information Update looks at the work of FOIANet and its members through a different lens, namely by assessing developments from the perspective of civil society in the sense both of being written by civil society organisations and of focusing on developments of relevance to civil society.

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Taking Stock

The Global Right to Information Update has been prepared by the FOIANet as part of the network's mandate to share information in support of the work of our members. The exchange of information, news and developments—through our discussion list and our website—has always been the main strength of the FOIANet. The aim of this Update is to go beyond the news and questions that are shared on a daily basis through our discussion list. Specifically, it aims to probe more deeply into a key issue for our members, namely the way in which civil society working on right to information (RTI) issues has developed in the different regions of the world. In this way, we hope to foster a deeper understanding of the nature of challenges and opportunities for advocates across the network, as well as to facilitate the development of stronger relationships between advocates within and among different regions, and with FOIANet itself.

Beyond the very general goal of fostering a better understanding among our members, the Update has a number of more specific objectives. Many RTI advocates around the world face common challenges; sharing information about successful solutions or strategies for tackling these challenges is an important way to help others solve them. We believe that the regional nature of the Update is particularly important in this regard. The FOI movement has developed in different ways in different regions, and each region has its own particular trajectory towards realising RTI.

The Update reveals that the challenges faced by advocates, and the campaigning tactics used in each region, are at times remarkably similar. National civil society coalitions, for example, are mentioned by many authors as having made a central contribution to campaigns. In other cases, challenges differ greatly depending on cultural context. For example, in South Asia, a problem has been identified of a lack of NGO transparency, which has created an environment where some civil society groups are leading by example; this issue is further complicated by the fact that, in some countries in the region, civil society is formally covered within the scope of the national RTI law.

In many regions there are relatively strong relations among advocates from different countries; the Update seeks to foster better understanding and to stimulate international dialogue among the different regions of the world about this core human rights issue and its development going forward. We note that while there are plenty of national publications about RTI developments, this is far less true at the regional level. The Update also aims to draw attention to the global nature of the movement for the right to information. We hope that this will assist advocates both within and outside of FOIANet find out about each other, and thereby further build and strengthen the movement.

Finally, for individuals and groups fighting for RTI, particularly those working in difficult contexts who find themselves outnumbered by advocates for secrecy, we hope that stories from other areas of the world will serve as encouragement in their struggles to open closed doors. For FOIANet, this sharing of experiences is a step towards working even more closely with our members to further work in solidarity to promote the realisation of a strong and effective right to information worldwide.

Generating Knowledge Together

The Update is a compilation of civil society experiences reported directly by advocates themselves from seven regions of the world. This is what makes the Update perhaps the most comprehensive qualitative resource currently available for understanding the global movement for the right to information. At the same time, the extensive geographical reach of the Update means that it cannot be comprehensive in terms of covering every country or campaign. Rather, the Update aims to provide an overview of the overall civil society and advocacy movement in each region.

The main body of the Update comprises sections covering seven regions of the world which have distinct experiences of the right to information. The regions covered are Africa, the Americas, Australasia and Oceania, East and Southeast Asia, Europe, the Middle East and North Africa and South Asia'. The Update follows an agreed general structure, with each section giving a brief contextual overview of developments in the region, followed by a 'strengths, weaknesses, opportunities and threats' or SWOT analysis, a presentation of success stories and lessons learned, and finally, a section which looks forward on how to address challenges. At the same time, the style of presentation varies, and the choice of content for each region reflects the judgement by contributors of what they felt was important.

The presentation of regional material is complemented by case studies, sometimes of individual successful requests and in other cases with stories of campaigns and historical developments. Case studies are often able to transmit an effective snapshot of the situation to readers. Focused accounts also help us understand the impact of the right to information on communities and democratic development.

The choice of authors was participatory from the beginning. Members of FOIANet were asked to nominate themselves as writing groups, and of those nominated, lead organisations were chosen by the FOIANet Steering Committee, which is elected by the membership. Where no active groups from a region nominated themselves, the Steering Committee identified known experts in the field to contribute the relevant sections.

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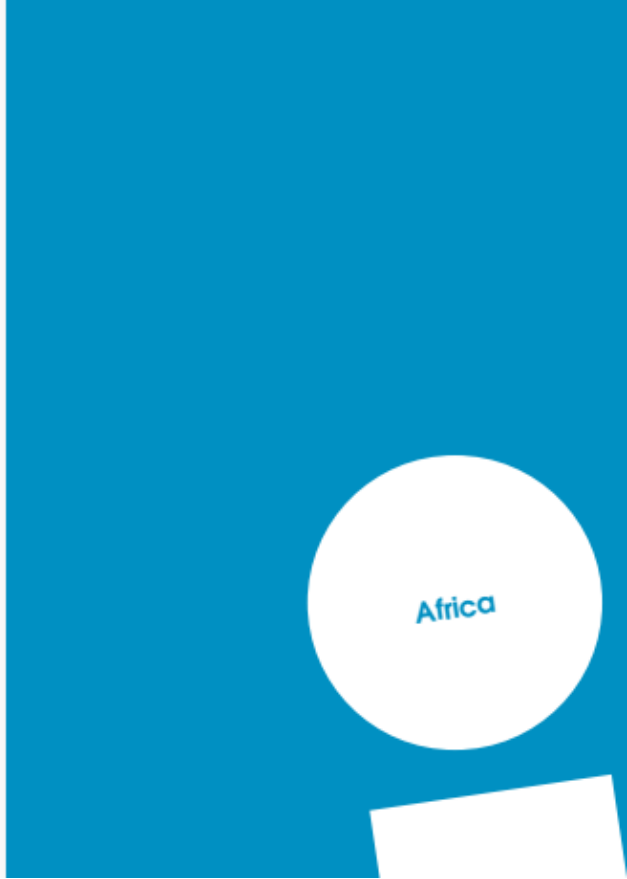
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Africa



Africa

Sub-Saharan Africa (SSA) comprises 48 countries all of which are members of the African Union that brings together a family of 54 countries. SSA has five different regional economic communities: the Economic Community for West African States (ECOWAS), East African Community (EAC), Southern Africa Development Community, Economic Community of Central Africa States (ECCAS) and Intergovernmental Authority on Development (IGAD). With many States having gained political independence from colonial rule in the 1950s and 60s, the continent is relatively politically young in several respects. Africa is becoming a significant player in global affairs in part due to a young and increasingly educated population, natural resources and fast-growing economies. In some regions Africa is recovering from long years of conflict and in others, new opportunities and challenges make the need for transparency evermore pertinent.

The authors
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The right to information is currently recognised in six African Union treaties: Article 9 of the African Charter on Human and Peoples Rights, Article 19 of the African Charter on Democracy, Elections and Governance, Articles 9 and 12(4) of the African Union Convention Against Corruption, Articles 10(3d) and 11(2i) of the African Union Youth Charter, Article 6 of the African Charter on Values and Principles of Public Service and administration, and Article 3 of the African Statistics Charter.

It is not clear how many civil society organisations are currently working on RTI issues in Africa, but advocacy, research and networking on RTI is growing. Right to Know Day is an important event which demonstrates this increase in advocacy for the RTI. Only three organisations reported undertaking right to know day activities in September 2010, while the number increased to fourteen in 2011¹. In 2012, there were activities across the continent, with specific events in the South African Development Community (SADC), and Eastern and Western Africa. In Uganda, for example, the day was jointly marked by CSOs and Government and the Minister of Information promised that the Government was considering officially recognising the day. On the same day, the Minister of Lands, Housing and Urban Development launched his ministry's access to information manual.

There is growing recognition and application of the right to information across the continent, and particularly in sectors such as natural resources, education, health and public procurement, and this is expected to strengthen over the coming years. Africa Freedom of Information Centre (AFIC) is the largest membership-based organisation bringing together civil society groups working on RTI issues in Africa. It is a pan-African civil society membership organisation and resource centre, with 29 CSO members from sixteen countries².

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Mauritania

Cape Verde

Senegal Gambia

Guinea-Bissau

Sierra Leone

Côte d'Ivoire

Mali

Niger

Nigeria

Cameroon

Gabon

Sudan Chad

Eritrea

Guinea

Burkina Faso

Benin

Djibouti

Somalia

Liberia

Ghana

Togo

Central African Republic

South Sudan

Ethiopia

Equatorial Guinea

Uganda

Kenya Congo Sao Tome and Principe

Democratic Republic

Rwanda of the Congo

Burundi

Tanzania

Seychelles

Comoros Angola

Zambia

Malawi

Madagascar Zimbabwe Mozambique

Mauritius

Namibia Botswana

Swaziland

Lesotho South Africa

101-135

Countries with strong legal protection for the right to information

81-100

Countries with moderate legal protection for the right to information

61-80

Countries with poor legal protection for the right to information

0-60

Countries with very poor legal protection for the right to information

No score

Countries with no legal protection for the right to information

Source: map elaborated with country data from the RTI Rating, www.rti-rating.org

The notion of secrecy as safe was therefore carried by many liberation movements into government when they won freedom from colonial powers

SWOT Analysis

Sub Saharan Africa is a diverse continent that has had different colonial and post-colonial influences that affect the strengths, weaknesses, opportunities and threats to RTI on the continent. The matrix below summarises the situation.

Regarding the region's strengths, a number of civil society organisations in Africa received early exposure and training on RTI prior to their government counterparts, enabling them to provide leadership and advocacy on RTI. In countries like Uganda, Kenya, Botswana and Mozambique, civil society organisations initiated and drafted RTI bills. In Nigeria, years of repressive regimes galvanised civil society to form strong movements for right to information advocacy. South Africa, the first African country to adopt an RTI law, in 2000, was used as a reference point for civil society and public officials alike throughout Africa in drafting their own bills or ideas on implementation. In addition, a number of coalitions have been formed at the national level to coordinate efforts, and share capacities and strategies.

The major weaknesses of civil society organisations involved in RTI work in Africa emanate from historical circumstances as well as country specific contexts. The oppressive nature of the former colonial regimes in Africa left a lasting legacy of a culture of secrecy that was largely maintained in the post colonial environment and which therefore continues to affect the current development of RTI and the work of civil society organisations. Part of the reason for this is that liberation movements were forced to operate underground, making secrecy a way of life within those movements, and central to their survival. The notion of secrecy as safe was therefore carried by many liberation movements into government when they won freedom from colonial powers. The relatively recent nature of this history and the continued presence of many liberation movements as present-day governments in Africa presents a unique challenge for RTI activists.

Generations of oppression have also created a discovery that in many instances does not believe it has the right to know about the actions of government. Furthermore, many citizens feel indebted to the movements, now governments, that liberated them from colonial oppression and are hesitant to speak out against them. This poses significant challenges for civil society organisations, which must educate the public about the right and the power it affords them.

For a long time many African governments and indeed members of the media and other stakeholders considered the right to information as being for the exclusive benefit of the media, rather than an enabling basic human right for everyone. This misunderstanding has negatively impacted on efforts to recognise and advance RTI.

Strengths

- Strong regional and national RTI networks
- CSO experience in initiating and drafting RTI bills
- Growing RTI knowledge base
- Reasonable regional policy environment
- 11 countries with RTI laws
- Understanding of RTI's utility in various sectors
- Special mechanisms such as the ACHPR Special Rapporteur on Freedom of Expression and Access to Information

Weaknesses

- Secretive culture left by colonial regimes and liberation movements
- Weak laws and poor enforcement mechanisms and capacity
- Inadequate political will for RTI in the majority of countries
- Weak institutional mechanisms at regional and national level
- Restrictive legal and operational environments for civil society
- Slow democratisation and lack of human rights culture
- Limited funding base for CSO and government programmes

While it is recognised that RTI is a crosscutting issue, an absence of CSOs dedicated exclusively to the promotion of this right at the country level has undermined its development by limiting opportunities for mainstreaming, coordination and focused attention. In Angola, for example, lack of effective coordination among CSOs, combined with a lack of political will by government, has thwarted implementation of the country's RTI law.

The restrictive environment for civil society in many African countries has also posed a challenge for RTI. In Ethiopia, for example, the Charities and Societies Proclamation Act restricts foreign funding yet there are very few other fundraising opportunities within the country. A more recent law

Opportunities

- Improving policy environment underpinned by 6 African Union treaties that recognise RTI
- Large number of CSOs with Observer status with ACPFR
- Special initiatives like APRI Declaration, Open Government Partnership
- 17 countries have constitutional guarantees for RTI
- Model Law on Access to Information for Africa
- The Open Contract Initiative

Threats

- Militarism and lack of democratic space
- Competing global interests and emergence of new powers
- Economic hardships leading to the sacrifice of human rights agendas and the prioritisation of economic issues over RTI
- Terrorism and emergence of secretive regimes

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in Ethiopia prohibits the use of Skype and other voice over the Internet programmes⁴. In Uganda, NGOs are required to renew their licenses every year, while fears abound that stringent immigration policies could be used to intimidate human rights NGOs, based on their funding sources, staff coming from abroad, and their international work. Other weaknesses in the region relate to lack of skills, limited funding for civil society and poor capacity to manage information inside public bodies.

At the same time, there have been important successes. Over the past two years in Uganda, human rights CSOs have intensified campaigns for transparency and accountability, leading to the resignation of three senior ministers and trial of three other ministers in court against corruption charges, and three other ministers facing a parliamentary inquiry on corruption. These events have altered the political environment, with the ruling party losing nine out of eleven parliamentary by-elections. During the consideration of Angola's state of human rights report at its 51st Session, the African Commission on Human and Peoples' Rights asked the government to explain why, despite the overwhelming needs of the population and the human rights situation in the country, so few civil society actors were mentioned in the report. An improving policy environment has favoured the growth of RTI on the continent. The number of African Union instruments that recognise the right has increased to six, as noted above.

The origin of RTI laws in Africa is mixed. In Uganda and Nigeria, civil society organisations campaigned for RTI laws and secured this as part of the struggle for recognition of democratic rights. On the other hand, the governments of Angola, Guinea-Conakry, Niger, and Zimbabwe adopted RTI laws on their own initiative and not as part of a democratisation process. The Angolan law is a direct copy of the law of Portugal, the former coloniser; it is not clear what motivated military juntas in Niger and Guinea-Conakry to adopt RTI laws a few months before handing over power. In Zimbabwe, President Mugabe's ZANU-PF government adopted the restrictive Access to Information and Protection of Privacy Act (AIPPA)⁵ in response to the media's exposure of numerous scandals involving senior ZANU-PF leaders at a time when the opposition Movement for Democratic Change was gaining strength and visibility. The law was designed to control the free flow of information, rather than to facilitate it, and contains provisions which give the government extensive powers to control the media and suppress free speech by requiring the registration of journalists and prohibiting the 'abuse of free expression'. These powers have been widely abused.

At the time of publication, Rwanda is the most recent country in the world to have adopted an RTI law, which took place in March 2013. Rwanda

has had a troubled past characterised by conflict and genocide which has inevitably impacted on governance, transparency and accountability. Rwanda is, however, taking steps to promote openness, being the first East African Community (EAC) partner state to ratify the African Charter on Democracy, Elections and Governance and the second EAC member to adopt an RTI law. It is essential that for the realisation of the right to information that the government create a conducive environment for the media, civil society groups and ordinary people to be able to use the RTI law, and ask even the most difficult questions.

The African Commission on Human and Peoples' Rights, through its Special Rapporteur on Freedom of Expression and Access to Information, has made RTI a central focus of the Commission's agenda. Principle IV of the Declaration of Principles of Freedom of Expression in Africa, adopted by the Commission in 2002, has become a central point for the Commission and human rights groups when assessing the compliance of State Parties to the African Charter on Human and Peoples' Rights in relation to RTI.

Close collaboration between the current Special Rapporteur, Pansy Tikula, and CSOs has resulted in the adoption of the African Platform on Access to Information declaration and the Model Law on Access to Information for Africa, which was adopted very recently by the Commission. Through her efforts, RTI is now a common feature in the Commission's conclusions and recommendations in country state of human rights reports.

RTI advocacy has grown significantly in Africa thanks to the engagement of civil society organisations. However, to increase the impact, these organisations need to document their work better, and to share information about their achievements and failures. This process should make full use of advances in information and communication technologies on the continent.

At the national level, 17 countries have constitutional guarantees for RTI, with Kenya being the most recent country to do so. Eleven African countries – namely South Africa, Angola, Zimbabwe, Uganda, Ethiopia, Liberia, Niger, Nigeria, Guinea Conakry, Tunisia and Rwanda – have adopted RTI laws. The government of Zambia has promised to prioritise the passage of the RTI bill. The governments of Botswana, Rwanda, Sierra Leone and Ghana have at various times made clear public declarations of their intention to adopt RTI laws, although the passage of a significant period of time since many of those declarations raises concerns about whether or not they can be taken seriously. Kenya's RTI bill has been revived and could be passed soon. The Open Government Partnership, launched on 20 September 2011, appears to have re-invigorated initiatives for transparency across the region.

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